

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 4:10CR209 CDP
)	
TERESA OVSAK,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This matter is before the Court on defendant Teresa Ovsak's motion and amended motion to dismiss the indictment because of the delay involved in completing the competency evaluation. Pursuant to 28 U.S.C. § 636(b), all pretrial motions were referred to United States Magistrate Judge Mary Ann L. Medler. Judge Medler recommended that the motion be denied. Defendant has objected to that recommendation, and the government filed a response to the objection.

I have conducted *de novo* review of this matter.¹ Everyone agrees that the delay in completing the competency evaluation in this matter violated the statutory time limits under 18 U.S.C. § 4247(b). Everyone also agrees that the delay was not caused by the prosecution in this case. Instead, the delay resulted from a combination of several things. The United States Marshal's Service lacks sufficient resources to

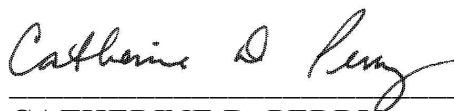
¹I have reviewed the file in its entirety, and have listened to the recordings of each hearing before the Magistrate Judges: the initial appearance before Judge Buckles, and the arraignment, competency hearing, and motion hearing before Judge Medler.

timely transport prisoners for mental evaluations, and the the Bureau of Prisons lacks space and personnel sufficient to timely complete mental evaluations. Even given the lack of resources, there is no doubt that the Bureau of Prisons was derelict in its duty to promptly conduct and report on the evaluation; it repeatedly promised to send the report and then repeatedly failed to fulfill its own promises. Although I believe this is inexcusable, I also do not believe that it violates defendant's due process rights. Defendant has not been prejudiced in her ability to prepare the case, nor has she shown any other prejudice that would rise to the level of a due process violation.

The Magistrate Judge correctly analyzed the law and I adopt her reasoning in its entirety. Although this delay is certainly unfortunate, it does not warrant dismissal of the lawsuit as defendant seeks. Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation of the United States Magistrate Judge [#30] is **SUSTAINED, ADOPTED, and INCORPORATED** herein.

IT IS FURTHER ORDERED that defendant's motion to dismiss (as amended) [# 24, 25, 29] is denied.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 29th day of November, 2010.